

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEANGELO L. HAMILTON,

Defendant-Appellant.

UNPUBLISHED

July 8, 2003

No. 239721

Wayne Circuit Court

LC No. 01-004014

Before: Sawyer, P.J., and Meter and Schuette, JJ.

MEMORANDUM.

Defendant appeals as of right his jury conviction for assault with intent to commit great bodily harm, MCL 750.84, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.224b. We affirm.

Defendant argues that he is entitled to resentencing because the trial court failed to recognize that it had the discretion to impose a lesser maximum sentence under the habitual offender statute, MCL 769.11. There is no legal requirement that a trial court state on the record that it is exercising its discretion. *People v Beneson*, 192 Mich App 469, 471; 481 NW2d 799 (1992). Absent clear evidence that the sentencing court incorrectly believed that it lacked discretion, the presumption that the trial court knows the law must prevail. *People v Knapp*, 244 Mich App 361, 389; 624 NW2d 227 (2001). The sentencing transcript shows that the court exercised its discretion to sentence defendant to the maximum allowed.

Convictions for felon in possession of a firearm and felony-firearm do not violate the Double Jeopardy Clauses of the United States and Michigan Constitutions. *People v Dillard*, 246 Mich App 163; 631 NW2d 755 (2001). Felon in possession of a firearm is not one of the statutorily enumerated offenses for which a felony-firearm conviction cannot be obtained. *Id.*, 167. The two statutes have distinct purposes addressing different social norms, permitting multiple punishments. *Id.*, 171.

Defendant's presentence report listed defendant's prior convictions, and it also listed the charges he was arrested for, which were more serious than the convictions. First, defendant failed to preserve challenge under MCR 6.429(C). In any event, although a defendant's arrest record is not a required item in a presentence report, the report should include any information that may aid the court in sentencing. MCR 6.425(A)(12). A trial court has wide discretion in imposing sentence and may consider evidence of defendant's other alleged criminal conduct not

resulting in conviction, provided the defendant has the opportunity to refute such evidence. *People v Collier*, 105 Mich App 46; 306 NW2d 387 (1981). A sentencing court may consider the facts underlying uncharged offenses, pending charges, and acquittals. *People v Coulter (After Remand)*, 205 Mich App 453, 456; 517 NW2d 827 (1994). Where the nature of the charges brought against defendant in prior proceedings is relevant to the sentencing decision, that information is properly included in the presentence report. MCR 6.425(A)(12).

Affirmed.

/s/ David H. Sawyer

/s/ Patrick M. Meter

/s/ Bill Schuette